

REMARKS

Applicants also herein request a three month extension for this response as allowed under 37 C.F.R. § 1.136(a). The Examiner is authorized to charge Deposit Account No. 19-0134 in the name of Novartis Corporation for the fee required under 37 C.F.R. § 1.17(a) and other fees that maybe deemed owed or credit any overpayment.

In the Office Action issued on December 4, 2006, the Examiner:

- acknowledged the Request for Continued Examination, removed the finality of the previous Office action, entered the amendments to independent Claims 2 and 11, and entered new Claims 21 through 23;
- rejected Claims 2 through 4, 8, 11 through 14, 18, 19, and 21 through 23 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 4,523,691 ("Larkin");
- rejected Claims 5 and 16 under 35 U.S.C. §103(a) as being unpatentably obvious over Larkin in combination with United States Patent No. 4,559,052 ("Babson");
- rejected Claims 6, 7, and 17 under 35 U.S.C. §103(a) as being unpatentably obvious over Larkin; and
- rejected Claims 9 and 15 under 35 U.S.C. §103(a) as being unpatentably obvious over Larkin in combination with United States Patent No. 4,836,397 ("Fowles").

Applicants do not acquiesce in the correctness of the rejections or objections and reserve the right to present specific arguments regarding any rejected or objected-to claims not specifically addressed. Further Applicants reserve the right to pursue the full scope of the subject matter of the claims in a subsequent patent application that claims priority to the instant application.

The Applicants have fully considered the Office Action issued on December 4, 2006, along with the cited references, and submit this Reply in response to the Examiner's rejections. Reconsideration of the application for patent is requested.

Rejections of Claims under 35 U.S.C. §102

The Examiner rejected Claims 2 through 4, 8, 11 through 14, 18, 19, and 21 through 23 under 35 U.S.C. §102(b) as being anticipated by Larkin. The Applicants respectfully traverse this rejection of the claims because Larkin fails to disclose each and every element and limitation of any of the rejected independent claims (*i.e.*, Claims 2, 11, and 23). As such, Larkin cannot properly serve as an anticipatory reference under §102(b) for any of the rejected claims.

As discussed in the submission filed with the Request for Continued Examination, Claim 2 requires that the base have a boat shape. Larkin does not teach or suggest a base that has a boat shape. In the rejection of independent Claim 2, the Examiner characterizes element 19 as "a boat-shaped base section." A careful review of the figures in Larkin, and the accompanying description, reveals that element 19 does not have a boat-shape at all. For example, the top view illustrated in Figure 5 clearly shows that the base 19 has a rib-like structure that simply cannot reasonably be characterized as boat-shaped. For at least this reason, Larkin does not disclose each

and every limitation of independent Claim 2, or claims that depend therefrom. Accordingly, withdrawal of the rejection of Claims 2, 4, and 8, 21, and 22 is appropriate and respectfully requested.

As discussed in the submission filed with the Request for Continued Examination, Claim 11 requires that the base section of the closure device be sealingly attached to the edge of the pouch at the port. Larkin does not teach or suggest such a structural relationship between the closure device and the pouch. Indeed, the closure disclosed by Larkin is secured to a pouch in a completely different manner. As best illustrated in Figure 15, the base 55 is disposed at a point external to the edge of the pouch. The port structure 46 is formed as an integral part of the pouch 68 with the base 55 of the port spaced from the edge of the pouch 68. This structural relationship stands in stark contrast to that required by Claim 11, which requires that the base be "sealingly attached to said edge of said pouch at said port." In his rejection, the Examiner points to Figure 7 as illustrating "the base sealingly attached to an edge of the container." A careful review of Figure 7, however, fails to reveal any seal between the base (element 19, as characterized by the Examiner) and the container. Indeed, a careful review of the entirety of Larkin reveals a lack of any such disclosure. For at least this reason, Larkin does not disclose each and every limitation of independent Claim 11, or claims that depend therefrom. Accordingly, withdrawal of the rejection of Claims 11 through 14, 18, 19 is appropriate and respectfully requested.

Newly added independent Claim 23 also requires "a boat-shaped base section." The rejection of this Claim as being anticipated by Larkin fails, therefore, for at least the reason described above regarding the boat-shaped limitation in connection with independent Claim 2. Accordingly, withdrawal of the rejection of this claim is appropriately and respectfully requested.

Rejections of Claims under 35 U.S.C. §103

The Examiner rejected Claims 5 through 7, 9, and 15 through 17 as being unpatentably obvious under 35 U.S.C. §103 based on Larkin by itself (Claims 6, 7, and 17) or in combination another cited references (Babson for Claim 5 and 16, and Fowles for Claims 9 and 15). Each of the listed obviousness rejections recites a summary conclusion drawn by the Examiner regarding the legal question of obviousness (e.g., "it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the second seal of Larkin et al. to be made of peelable foil as taught by Babson...").

The Applicants respectfully assert that each of these conclusory characterizations of the claims is insufficient to support a legal conclusion of obviousness. A more thorough analysis is warranted, and, indeed, required. As the Supreme Court recently reminded the patent community in *KSR v. Teleflex* (550 U.S. ___ (2007)), the *Graham* factors continue to *define the inquiry that controls*:

"While the sequence of these questions might be reordered in any particular case, the factors continue to define the inquiry that controls. If a court, or patent examiner, conducts this analysis and concludes the claimed subject matter was obvious, the claim is invalid under §103." Id. (emphasis added).

Because the Examiner's summary analyses fail to fully address the controlling

Graham factors (the scope and content of the prior art; the differences between the prior art and the claims at issue; and the level of ordinary skill in the pertinent art), they are insufficient to support the legal conclusions that the rejected claims are obvious.

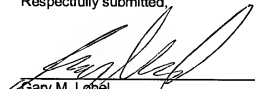
Accordingly, the Applicants respectfully request that the Examiner reconsider each of the obviousness rejections in the context of a complete *Graham* analysis. The Applicants respectfully assert that, once such a proper analysis is conducted, the Examiner will view the rejected claims as non-obvious. However, if the Examiner reasserts his conclusion that the claims are obvious, the Applicants will, at that time, determine whether the presentation of secondary considerations of non-obviousness is appropriate.

CONCLUSION

The Applicants submit the remarks made herein to address the rejections asserted by the Examiner in the December 4, 2006 Office action. The Applicants believe that all pending claims currently under consideration define patentable subject matter and respectfully assert that a Notice of Allowability is appropriate and proper.

Should the Examiner have any questions regarding this Reply, or the remarks contained herein, the undersigned attorney would welcome the opportunity to discuss such matters with the Examiner.

Respectfully submitted,



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